

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
v.	§	Cr. No. C-08-291
	§	C.A. No. C-09-215
ALBERT ALVARADO.	§	

**ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY,
ORDER GRANTING MOTION TO PROCEED *IN FORMA PAUPERIS*,
AND ORDER GRANTING IN PART MOTION FOR PRODUCTION OF RECORD**

By Order signed on June 21, 2010 and entered on June 22, 2010, the Court denied Albert Alvarado's motion pursuant to 28 U.S.C. § 2255 and also denied him a Certificate of Appealability. (D.E. 117.) The motion was denied after an evidentiary hearing was held in the case. (See D.E. 112; Minute Entry dated June 15, 2010.) Final judgment was also entered on June 22, 2010. (D.E. 118.) On July 6, 2010, the Clerk received from Alvarado a motion to reconsider the Court's denial of his § 2255 motion and the denial of a COA. (D.E. 119.) The Court issued an order denying that motion on July 9, 2010. (D.E. 120.)

Alvarado has now filed a timely Notice of Appeal (D.E. 122), and has submitted three additional motions in conjunction with his appeal (D.E. 121, 123, 124), all of which are pending before the Court and addressed herein.

I. Motion for Certificate of Appealability

Alvarado's first filing is a Motion for Certificate of Appealability. (D.E. 123.) Although filed with the Clerk of this Court, it appears to be directed toward the Fifth Circuit. (See D.E. 123 at 1 (referring to the Fifth Circuit in case style); id. at 12 (stating that "this Court should Order a re-

trial” and asking that the trial be held before a different judge because “Honorable Judge Janis G. Jack is prejudice [sic] towards appellant.”.)

To the extent Alvarado seeks a Certificate of Appealability from this Court, it is DENIED for the reasons previously set forth by the Court. (See D.E. 117 at 14-15.) The Court advises Alvarado, however, that he may request the issuance of a COA from a circuit court of appeals judge. Fed. R. App. P. 22(b). If he does not expressly make such a request for a COA, his notice of appeal shall be deemed to constitute a request addressed to the judges of the Fifth Circuit. Id.

II. Motion to Proceed *in forma pauperis*

Alvarado was found eligible for appointed counsel throughout his criminal proceedings and again found eligible for appointed counsel to represent him at the evidentiary hearing in his § 2255 case. (D.E. 112.) Based on all of the financial information available in the record, it appears that Alvarado is unable to pay the appellate filing fee or to afford the costs of an appeal, such as transcripts. Accordingly, his motion to proceed *in forma pauperis* (D.E. 121) is GRANTED.

III. Motion for Production of Entire Record

In the last of his three filings, Alvarado requests that the Clerk produce the entire record in his criminal case, all transcripts including the June 15, 2010 evidentiary hearing, and all sealed documents at government expense. (D.E. 124.) He further requests that a certified docket sheet be prepared and forwarded to the Fifth Circuit Court of Appeals and to him. (Id.)

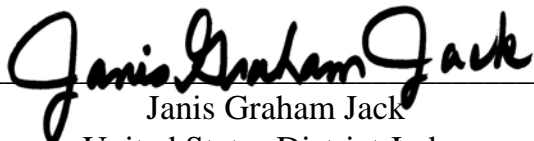
The Court finds, pursuant to 28 U.S.C. § 753(f), that Alvarado’s appeal is not frivolous and that the transcript from the evidentiary hearing is necessary for the Court of Appeals to determine whether he is entitled to a Certificate of Appealability. Accordingly, the Court GRANTS IN PART Alvarado’s motion, insofar as he requests a copy of the transcript from the evidentiary hearing.

As to his request for a certified copy of the entire record from his criminal proceedings and § 2255 proceedings, it is DENIED. The Clerk of this Court will follow the necessary procedures in order to certify the record for appeal. The Clerk is not required, however, to provide copies of all documents in the criminal case to Alvarado. Additionally, Alvarado should have retained copies of his § 2255 motion and related documents, as well as copies of the United States' response and related briefings, which were served on him. He has not shown any entitlement to the numerous pages of documents he seeks at government expense.

CONCLUSION

For the foregoing reasons, Alvarado's motion for a Certificate of Appealability (D.E. 123) is DENIED. His motion to proceed *in forma pauperis* on appeal (D.E. 121) is GRANTED, and his motion for production of record and transcript at government expense (D.E. 124) is GRANTED IN PART and DENIED IN PART. The Court shall provide Alvarado with a copy of the transcript from his evidentiary hearing in this case at government expense. As to all other documents he seeks at government expense, his motion is DENIED.

It is so ORDERED this 22nd day of July, 2010.



Janis Graham Jack
United States District Judge